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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JOHN SPOTTISWOOD and NANCY  
MIYASAKI,  
Plaintiff,  
vs.  
UNITED STATES OF AMERICA,  
Defendant.  
  ) No. CV-17-00209 MEJ  
  )  
  )  
  ) MEMORANDUM OF LAW IN SUPPORT  
  ) OF PLAINTIFFS' CROSS MOTION FOR  
  ) SUMMARY JUDGMENT  
  )  
  ) Judge: Hon. Maria-Elena James  
  ) Date: March 1, 2018  
  ) Time: 10:00 a.m.  
  )  
  )

Plaintiffs John Spottswood and Nancy Miyasaki submit the following Memorandum of Law in Support of Plaintiffs' Cross Motion for Summary Judgment.

1 STATEMENT OF UNDISPUTED FACTS  
2

3 1. Plaintiff, John Spottiswood (hereinafter, "Plaintiff husband"), prepared a joint  
4 federal income tax return for he and his wife, Plaintiff Nancy Miyasaki, for the 2012 tax year  
5 using TurboTax, a consumer tax software. Defendant's Motion for Summary Judgment ¶ 1.

6 2. On that return, Plaintiff husband made a mistake when inputting the social  
7 security number for a dependent. The joint 2012 Form 1040 containing that error was  
8 transmitted to TurboTax on or about April 12, 2013 to be electronically submitted to the IRS for  
9 electronic filing. Defendant's Motion for Summary Judgment ¶ 2.

10 3. On April 12, 2013, the IRS rejected Plaintiffs' 2012 joint Form 1040 for  
11 electronic filing. Defendant's Motion for Summary Judgment ¶ 3.

12 4. The IRS notified TurboTax the Form 1040 had been rejected for electronic filing  
13 due to an error - the dependent's Social Security number and last name do not match IRS  
14 records. Defendant's Motion for Summary Judgment ¶ 4.

15 5. On or about April 12, 2013, TurboTax sent an email to Plaintiff husband notifying  
16 him the IRS had rejected the 2012 joint federal income tax return with error R0000-504-02,  
17 meaning that the dependent's Social Security number and last name on the return did not match  
18 what the IRS has in its records. Defendant's Motion for Summary Judgment ¶ 5.

19 6. Within the TurboTax software, there was a "check e-file status" screen for the  
20 2012 joint Form 1040. However, Plaintiff Husband did not check the "check e-file status" until  
21 many months later. The TurboTax notification provided the following notice:

22 • Rejected: Return reviewed

23 After fixing your errors, we'll help you file your return again.

24 • Verify Dependent's Social Security Number. The Social Security number or the last  
25 name does not match what the IRS has in their records.

1           • Rejection error R0000-504-02: Dependent's Social Security number or name doesn't  
2 match. Defendant's Motion for Summary Judgment ¶ 7.

3       7. Plaintiff husband did not receive notice of the e-filing rejection until much later,  
4 though at this time the exact date is unclear. Defendant's Motion for Summary Judgment ¶ 8.

5       8. Plaintiff husband provided the following statement to the IRS:

6           When I was investigating the issue, I discovered the following by logging back  
7 into my Turbo Tax 2012 software. First, I discovered that my return, which I  
8 thought had been successfully e-filed, had actually been rejected. If I had realized  
9 that there was a chance of rejection I would have mailed in my return, but e-filing  
10 seemed like an easier option and it was free with the software. Intuit may have  
11 informed me in the fine print that I needed to log back in to make sure that my  
12 return had not been rejected, but if so I did not read this fine print. Had I logged  
13 back in a few days later I would have realized that the return had been rejected.  
14 But I did not log back in until 18 months later.

15           Letter from Plaintiff husband to IRS with submission date of April 27, 2015, p. 1,  
16 ¶ 6, Defendant's Motion for Summary Judgment ¶ 9.

17       9. Plaintiff husband prepared the couple's joint 2012 California State Income Tax  
18 Return using TurboTax but did not electronically file the 2012 state tax return. Rather, he used  
19 the U.S. mail to file their 2012 state income tax return. Defendant's Motion for Summary  
20 Judgment ¶ 10.

21       10. Plaintiffs filed an abatement request with the IRS in August, 2016. The request  
22 was prepared by the undersigned attorney and filed via IRS Form 843. In the statement attached  
23 to that request, a representation was made that Plaintiffs' 2012 state tax return had been  
24 electronically filed using TurboTax without issue. Claim for Refund, pp. 1 (signature under  
25 penalty of perjury). Claim for Refund is Exhibit 3B to Stier Declaration. This representation was

1 not accurate. As stated above, the state return was actually mailed rather than e-filed so this was  
2 not correct.

3 11. On their 2012 joint federal income tax return, Plaintiffs reported owing \$395,619  
4 in federal income taxes and paid that amount on January 7, 2015, the date that their 2012 joint  
5 federal income tax return was filed with the IRS. Defendant's Motion for Summary Judgment ¶  
6 12.

7 12. Plaintiffs failed to notice that \$395,619 had not been withdrawn from their Bank  
8 of America bank account because they had an unusually high bank account balance.  
9 Defendant's Motion for Summary Judgment ¶ 13.

10 13. Plaintiffs filed their 2012 joint Form 1040 on January 7, 2015, and paid the  
11 \$395,619 in income tax liability in full. Defendant's Motion for Summary Judgment ¶ 14.

12 14. On February 16, 2015, the IRS assessed a late filing penalty of \$89,014.27, a  
13 penalty for failure to pay of \$41,539.99, and interest thereon. Motion for Summary Judgment ¶  
14 15.

15 15. A transcript of the return which Plaintiff husbanded attempted to file is attached  
16 to Plaintiffs' Opposition to Defendant United States' Motion for Summary Judgment and Cross  
17 Motion for Summary Judgment as Exhibit 1.

18 16. Plaintiffs' refund suit seeks abatement and a refund of the penalties for late filing  
19 and failure to pay and any interest on those penalties. Plaintiffs do not contest any other penalty  
20 or assessed interest.

21 17. On January 17, 2017, Plaintiffs filed this action seeking a refund of the assessed  
22 penalties for failure to file the 2012 Form 1040 and to pay the tax thereon, and for any interest  
23 attributable to those penalties.

1 DISCUSSION

2 A. Standard for Motion for Summary Judgment

3 Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and  
4 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to  
5 any material fact and that the moving party is entitled to a judgment as a matter of law. Celotex  
6 Corp. v. Cattrett, 477 U.S. 317, 322 (1986) (citing Fed. R. Civ. P. 56(c)). A party who moves  
7 for summary judgment bearing the burden of proof at trial, must produce evidence that would  
8 entitle him or her to a directed verdict if the evidence went uncontested at trial. C.A.R.  
9 Transp. Brokerage Co., Inc. v. Darden, 213 F.3d 474, 480 (9th Cir. 2000).

10 In this case, the material facts are not in dispute. Thus, summary judgment is  
11 appropriate. See generally Celotex.

12

13 B. Summary of Plaintiffs' Argument

14 Plaintiffs generally agree with Defendant United States. After e-filing their tax returns,  
15 Plaintiffs' diligence and follow-through left much to be desired. The couple failed to note that  
16 their bank account was never debited to pay the substantial 2012 federal tax balance shown on  
17 their own, self-prepared returns. Intuit sent an email to Plaintiff husband, at an e-mail address  
18 which he supplied, yet Plaintiff husband cannot recall having received this notice.

19 The reasonable cause standard requires that taxpayers exercise ordinary business care and  
20 prudence; a duty which cannot be delegated away to an agent. See generally United States v.  
21 Boyle, 469 U.S. 241 (1985). We agree that in this case, Taxpayers' conduct after submitting the  
22 e-filed returns was generally not in keeping with the reasonable cause standard.

23 However, we believe this may not matter. Under established case law, what Plaintiff  
24 husband e-filed was nevertheless, a valid 'return' for income tax purposes. Once the button was  
25

1 clicked and Plaintiffs' return was transmitted, there was a valid and timely return filed. There  
2 was no late filing.

3

4 C. Did Plaintiffs' Rejected E-Filing Constitute a 'Return'?

5 The first major case to examine what constitutes an income tax 'return' was Florsheim  
6 Bros. Drygoods Co. v. United States, 280 U.S. 453 (1930). At a time when the income tax was  
7 relatively new, a company filed for a temporary extension of time to file. See Forsheim Bros.  
8 Drygoods Co. at 460. Because the extension was not a list, schedule or return and did not  
9 specifically state the taxpayer's gross income, deductions and credits, it did not satisfy the  
10 requirements of an income tax return. Id. at 460. However, the Court noted that "the filing of a  
11 return which is defective or incomplete" may be sufficient to constitute a return, provided "the  
12 defective or incomplete return purports to be a specific statement of the (taxpayer's) items of  
13 income, deductions and credits." Id. at 462.

14 Next, in Zellerbach Paper Co. v. Helvering, 293 U.S. 172 (1934), a corporation filed an  
15 income tax return but new changes in the tax laws required that it file an additional return, which  
16 the company failed to submit. Nevertheless, the initial return was found to be sufficient. See  
17 Zellerbach Paper Co. v. Helvering at 180 ("Perfect accuracy or completeness is not necessary to  
18 rescue a return from nullity, if it purports to be a return, is sworn as such and evinces and honest  
19 and genuine endeavor to satisfy the law.").

20 Then in Germantown Trust Co. v. Commissioner, 309 U.S. 304 (1940), a taxpayer used  
21 the incorrect form to file its income tax returns. Despite using the wrong form, the return was  
22 deemed sufficient anyway. The return was valid because it "contained all of the data from which  
23 a tax could be computed and assessed." Germantown Trust Co. v. Commissioner at 308. See  
24 also, Lane-Wells Co. v. Commissioner, 134 F.2d 977 (9<sup>th</sup> Cir. App. 1943) (following  
25 Germantown Trust Co. under similar facts).

1        Eventually, from these cases a four-part test was established. See Beard v.  
2 Commissioner, 82 T.C. 766 (1984). The test to determine whether a document is sufficient to  
3 be considered a return has four elements:

4              (1) first, there must be sufficient data to calculate the tax liability,  
5              (2) second, the document must purport to be a return,  
6              (3) third, there must be an honest and reasonable attempt to satisfy the requirements of  
7 the tax law, and

8              (4) fourth, the taxpayer must execute the return under penalties of perjury. See Beard v.  
9 Commissioner at 777; see also United States v. Hatton (In re Hatton), 220 F.3d 1057 (9<sup>th</sup> Cir.  
10 App. 2000) (applying the Beard factors).

11        The Beard factors eventually became known as the “substantial compliance standard;” a  
12 standard which is generally accepted by the IRS. See IRS Chief Counsel Advice Memorandum  
13 201545016, p. 4 (“return was incorrect but as long as the return “on its face plausibly purports to  
14 be in compliance,” the fact that it is incorrect or even fraudulent does not prevent it from being a  
15 valid return.”).

16        Applying the Beard factors to the instant case, all four elements are met. First, the return  
17 which Plaintiff husband submitted for e-filing contained sufficient data to calculate the couple’s  
18 tax liability. See Exhibit 1 of Plaintiffs’ Opposition to Defendant United States’ Motion for  
19 Summary Judgment and Cross Motion for Summary Judgment. The only issue with the return  
20 was that Plaintiff husband made a typo on one of his dependent’s social security numbers. As  
21 explained below, these types of errors are commonly corrected for paper returns and sent through  
22 for normal processing. Second, the document purported to be a return. The transmitted return  
23 was filed on a regular Form 1040 and contained all of the couple’s relevant tax data. Third, there  
24 was an honest and reasonable attempt to satisfy the requirements of the tax law. As can be seen  
25 from the e-file transcripts, the return is complete in all important respects. Finally, fourth, the

1 taxpayer executed the return under penalty of perjury, a requirement which is satisfied  
2 electronically when submitting for e-filing.

3

4 D. IRS Return Processing

5 When processing income tax returns, the IRS has created something of a double standard.  
6 See Exhibit 2 & 3 of Plaintiffs' Opposition to Defendant United States' Motion for Summary  
7 Judgment and Cross Motion for Summary Judgment. E-filed returns are treated differently than  
8 paper returns. For paper returns, special staff and examiners are involved to ensure that common  
9 errors are corrected and continue to be processed normally. No such services exist for e-filed  
10 returns.

11 Exhibit 2 contains excerpts from the Internal Revenue Manual, which sets out IRS  
12 procedures. See Exhibit 2. The procedures in Exhibit 2 are for processing paper returns. For  
13 paper returns, the IRS employs code and edit examiners to fix common mistakes so they may  
14 continue being processed normally. See Exhibit 2. Section 3.11.3.13.3 specifically addresses  
15 invalid or missing dependent taxpayer identification numbers ("TINs"). Here, paper returns with  
16 such errors are examined and edited so that they may continue being processed normally. In the  
17 instant case, had Plaintiffs simply filed a paper return, their return would have been edited and  
18 processed as shown in the manual. There would not have been any late filing penalties.

19 Exhibit 3 contains some of the IRS procedures for processing e-filed returns. Here, no  
20 examiners or special staff are present to correct common mistakes. See Exhibit 3. Section  
21 3.42.5.9.2 explains that returns should be transmitted to the appropriate IRS campus within 24  
22 hours. Thereafter, rejected returns will trigger a notification which is sent back to the tax  
23 preparation software used by the taxpayer. Filing companies are to then translate the IRS reject  
24 codes into language which the taxpayer can understand. Per section 3.42.5.4, taxpayers may be  
25 able to call and report the transmission of an incorrect social security number to the IRS. See

1 Exhibit 3. However, this pre-requires that taxpayers be aware of the error and timely get a hold  
2 of the appropriate IRS department.

3 The above system establishes something of a double standard for e-filers. Even minor  
4 errors, such as the transposition of a digit, the misspelling of a name or other typos result in a  
5 complete rejection of the entire return, with the onus on the taxpayer to continue monitoring their  
6 e-file status and follow up on the matter. No such requirements exist for paper filers. These high  
7 standards, which exist only for e-filers, do not comport with the legal regime established by  
8 Beard and its Supreme Court predecessors. Per IRS e-filing procedures, there is no mention of  
9 the Beard factors or the substantial compliance doctrine. Further, no inquiry is required as to  
10 whether there was an honest and reasonable attempt to comply with the tax laws.

11

12       E. Filing Date

13 Treasury Regulation 26 C.F.R. 301.7502-1(d)(1) provides that an e-filed document is  
14 deemed to be filed on the date of the electronic postmark. In this case, there is no dispute that  
15 the IRS received Plaintiffs' e-filing on or before April 12, 2013. The IRS transcript notes this  
16 date as the received date for the return. See Exhibit 1, pps. 16-19 of Plaintiffs' Opposition to  
17 Defendant's Motion for Summary Judgment and Cross Motion for Summary Judgment (top right  
18 in the header).

19

20       Conclusion

21 Defendant United States bases its summary judgment motion on the argument that a  
22 return cannot be considered filed until it is acknowledged by the IRS and found acceptable by the  
23 agency for processing. See Defendant's Memorandum of Law in Support of Motion for  
24 Summary Judgment, p. 6. However, this has never been the applicable standard and ignores  
25 nearly a century of legal history. Such a standard would make the IRS the ultimate arbiter of

1 which returns are sufficient and which are not. Further, it would represent a radical departure  
2 from existing legal authorities and the system of judicial review which has shaped them since the  
3 creation of the income tax return. According to the IRS's own Chief Counsel, the Beard  
4 formulation is 'generally accepted' and is satisfied by incorrect and even fraudulent returns. See  
5 IRS Chief Counsel Advice Memorandum 201545016, p. 4. We believe that Plaintiffs' e-filing  
6 meets this standard and qualifies as a valid return.

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01/30/2018  
Date

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